

EXECUTORIAL POWER OF FIDUCIARY CERTIFICATE WITH VEHICLE GUARANTEE AS OBJECT AT "EMA DUTA MANDIRI SAVINGS AND LOAN COOPERATIVE"

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Abstract

This study discusses the implementation of fiduciary guarantees in loan agreements secured by vehicles and the executorial power of fiduciary certificates at the Ema Duta Mandiri Savings and Loan Cooperative. In practice, every loan must be accompanied by collateral to ensure certainty and protection for both parties in the event of default. Based on Law Number 42 of 1999 concerning Fiduciary Guarantees, every object pledged under a fiduciary arrangement must be registered to obtain a fiduciary certificate. This certificate carries executorial power, allowing direct execution without court proceedings. This research employs a juridical-empirical method, with data collected through literature studies and interviews. The findings indicate that Ema Duta Mandiri Cooperative requires fiduciary guarantees for each loan to protect its interests against the risk of default. Registering fiduciary collateral provides legal certainty and protection for both borrowers and the cooperative, while granting preferential rights to the fiduciary recipient over other creditors. The fiduciary certificate holds the same legal force as a court decision due to its executorial title, *"For the Sake of Justice Based on the Almighty God,"* thereby enabling direct execution of the collateral if the debtor defaults.

Keywords: Credit, Fiduciary Certificate, Executorial Power

Introduction

Economic development, as part of national development, is one of the efforts to achieve a just, prosperous, and prosperous society rooted in Pancasila and the 1945 Constitution. As development activities increase, so does the need for funding, much of which is obtained through borrowing and lending from financial institutions. One way to obtain this funding is through cooperatives, namely through loans provided by cooperatives or other financial institutions. The emergence of financial institutions in the business world requires regulatory laws to ensure their smooth operation and guaranteed protection. Credit is essential for development, as credit is the lifeblood of entrepreneurs. Credit provision has traditionally been conducted through guarantee

institutions regulated by the Civil Code.

According to Financial Services Authority Regulation Number 35/POJK.05/2018 concerning the business operations of financing companies, a financing company is defined as a business entity that engages in financing activities in the form of providing funds or capital goods related to the credit application process, commonly referred to as debt and receivables. Meanwhile, debts cannot be based solely on trust; they must be accompanied by collateral. Collateral is generally closely tied to an object, as the object is the object of the debt. In practice, collateral is often used as collateral if the debtor fulfills their obligation to repay the debt. In practice, there are two types of collateral: personal collateral and material collateral. Personal collateral is provided by a third party in the form of a commitment to guarantee the fulfillment of the debtor's obligations to the creditor.

Collateral in the cooperative business world is one way to ensure that loans granted to debtors are repaid within the agreed timeframe, with the result being profit from the business. The reality that has occurred recently based on mass media coverage, after the birth of Constitutional Court Regulation Number 18/PUU-XVII/2019 and existing library literature, is the various obstacles in "taking" collateral to pay off debts in accordance with the debt agreement with the debtor and also the obstacles faced in implementing collateral execution, therefore it is necessary to have a study that is intended to find out the process and function of fiduciary guarantee registration.

Methods

This type of research is empirical legal research, also known as field research, which examines applicable legal provisions and what actually occurs in society. The empirical legal research method is legal research concerning the application or implementation of normative legal provisions in action in specific legal events occurring in society.

Results and Discussion

Implementation of Fiduciary Loan Provisions with Vehicle Collateral at the Ema Duta Mandiri Savings and Loan Cooperative

Loan collateral is an important instrument in analyzing the borrower's ability and willingness to repay the loan. The collateral must meet formal legal requirements according to applicable laws and regulations. This ensures that if a default occurs, the cooperative has sufficient evidence to take legal action. Furthermore, the collateral must be readily saleable or convertible into cash.

Collateral is a security provided by a debtor or third party to a creditor because the creditor has an interest in ensuring the debtor fulfills its obligations under a contract. M. Bahsan defines collateral as: "Anything received and submitted by a creditor to secure a debt in the community."

Article 1131 of the Civil Code stipulates that all assets of a debtor, whether movable or immovable, whether existing or future, serve as collateral for all debt obligations. With the enactment of Article 1131 of the Civil Code, a debtor automatically grants a guarantee to all of his or her creditors for all of the debtor's assets.

A guarantee must meet the requirements of a guarantee. Sutarno, in his book "Aspects of Credit in Banks," argues that the requirements for a guarantee are:

- a. It can easily facilitate the obtaining of credit by the party in need.
- b. It does not weaken the potential (strength) of the credit seeker to conduct their business.
- c. It provides certainty to the lender in the sense that the collateral is always available for execution, that is, it can be easily cashed in to repay the debtor's debt if necessary.

The types of guarantees recognized in Indonesian law can be classified according to their method of origin, nature, object, and authority to control them, as follows:

- 1) Guarantees established by law and guarantees arising from agreements;
- 2) Guarantees classified as general guarantees and special guarantees;
- 3) Guarantees of a material nature and personal guarantees;
- 4) Collateral that involves control over the object and collateral that does not control the

object;

5) Collateral that involves movable property and collateral over immovable property.

Collateral can provide protection and legal certainty to both cooperatives and borrowers.

For cooperatives, securing collateral, particularly movable property, through a fiduciary bond, provides legal certainty regarding the repayment of the borrower's debt in the event of default or bankruptcy. Fiduciary collateral provides legal certainty to cooperatives, other financial institutions, and individuals that the borrower's debt, along with interest, will be repaid by cashing in the collateral.

The transfer of ownership of an object based on trust. Scholars have argued that in Fiduciary, "Transfer of ownership rights based on trust," does not actually make the creditor the owner of the object that has been pledged, but only grants the security rights to the creditor as the purpose of the word "transfer" is nothing other than to provide a guarantee for the fulfillment of the right to claim execution of the collateral. Likewise, if adhering to the words "based on trust," it can be interpreted that with the transfer, the creditor does not actually become the owner of the collateral object, because by adhering to the prevailing interpretation (the doctrine above), it means that the guarantor believes that if the debt that has been given Fiduciary guarantee is later paid, then the ownership of the collateral object will return to the guarantor, and in practice this is what applies. In the case of providing loans with fiduciary collateral to non-bank financial institutions such as cooperatives, there are conditions where the loans provided by the cooperative to the borrower carry the risk of the borrower being unable to repay the principal and/or interest on time as agreed in the loan agreement, or in other words, the borrower defaulting (breaking the promise). Therefore, to guarantee repayment of the loan, the cooperative requires the borrower to provide collateral, including movable property, such as a vehicle, that can grant the cooperative the right and authority to obtain repayment by selling or auctioning the collateral if the borrower fails to repay the debt on time as agreed in the loan agreement.

This is a precautionary measure by the cooperative to avoid non-performing loans. The provision of collateral by the borrower to the cooperative is a primary requirement for granting

a loan. This collateral remains a general guarantee if the cooperative does not bind it with specific collateral, such as movable property secured under a fiduciary system. Because the binding of fiduciary guarantees will provide a primary (preferential) position to the cooperative in terms of payment, but the requirement to become a cooperative with a preferential position is that the object that becomes the fiduciary guarantee must be registered at the fiduciary registration office. That is why in order to provide legal protection to the parties, especially to the cooperative, the object that becomes the object of the fiduciary guarantee according to Article 11 of Law Number 42 of 1999 concerning Fiduciary Guarantees must be registered, while the requirement for registration of the object of the fiduciary guarantee is that the fiduciary guarantee deed must be made with a notary deed as regulated in Article 5 of the Fiduciary Guarantee Law in conjunction with Article 2 of Government Regulation Number 21 of 2015 concerning Procedures for Registering Fiduciary Guarantees and Costs for Making Fiduciary Guarantee Deeds.

A fiduciary guarantee agreement requires the object encumbered with the fiduciary guarantee to be registered. This means that the object encumbered with the fiduciary guarantee becomes binding only after registration. However, if the fiduciary guarantee agreement is not registered, the agreement with the fiduciary guarantee is merely a private agreement that lacks the power of execution to directly execute the fiduciary object in the consumer's possession. In principle, the fiduciary grantor may not transfer the fiduciary guarantee object to the fiduciary recipient. The fiduciary grantor no longer has the authority to transfer inventory items. However, to protect the fiduciary recipient whose debt is secured, if the fiduciary object holder transfers the inventory item, the fiduciary grantor is required to replace the transferred inventory item with an equivalent item, in this case equivalent in terms of type and value.

One of the formal stages inherent in a fiduciary guarantee is the birth of the fiduciary guarantee object, which occurs on the same date as the fiduciary guarantee is recorded in the fiduciary register. A notarial deed is an authentic deed and has the most complete evidentiary force. Therefore, the encumbrance of an object with a fiduciary guarantee is set forth in a notarial deed, which is a fiduciary guarantee deed. The fiduciary guarantee is enforced using an

instrument called a "Fiducia Guarantee Deed." The fiduciary guarantee deed must be a notarial deed and must be drawn up in the Indonesian language. The notarial deed also regulates the "promises" included and the matters that must be included in the fiduciary guarantee deed. In accordance with the Fiduciary Law, the fiduciary guarantee registration process begins with the preparation of a fiduciary guarantee deed by a notary public, which is then registered at the Fiduciary Registration Office. Fiduciary guarantee registration is carried out by submitting an application to the Fiduciary Registration Office, enclosing a fiduciary guarantee registration statement.

The fiduciary guarantee is then created on the same date the fiduciary guarantee is recorded in the Fiduciary Register, not when the fiduciary encumbrance occurs, with the fiduciary guarantee deed being drawn up before a notary public. The purpose of registering a fiduciary guarantee is to:

- a. Provide legal certainty to interested parties, especially other creditors, regarding the assets encumbered with the fiduciary guarantee;
- b. Create a fiduciary guarantee bond for the creditor (fiduciary recipient); Grant the creditor priority (preference) over other creditors, since the fiduciary grantor retains control of the assets subject to the fiduciary guarantee based on trust; and
- c. Fulfill the principle of publicity.

The Fiduciary Guarantee Law adheres to the principle of fiduciary guarantee registration. Although Article 11 of the Fiduciary Guarantee Law states that the registered asset is the asset encumbered with the fiduciary guarantee, it must be interpreted to mean that the fiduciary guarantee itself is registered. This registration obligation is certainly not without reason. According to Article 37 paragraph (3) of the Fiduciary Guarantee Law, if no adjustments are made within the specified time period, the Fiduciary Guarantee agreement does not constitute collateral rights over the assets as referred to in this Law. Based on the provisions of this paragraph, a Fiduciary Guarantee agreement that is not registered does not have any priority rights (preferences) either within or outside of bankruptcy and/or liquidation.

However, in practice at the Ema Duta Mandiri Cooperative, according to the decision of the loan committee, the movable property that is accepted as collateral is a vehicle (motorcycle or car), and not all collateral, especially vehicles stated in the loan agreement, is burdened or installed with a fiduciary guarantee registered at the Fiduciary Registration Office as required in Article 11 of the Fiduciary Guarantee Law. At the Ema Duta Mandiri Savings and Loan Cooperative (hereinafter abbreviated as KSP), the criteria for registering the vehicle guarantee are that in providing loans to its members for loans with a nominal value of less than Rp. 10,000,000 (ten million rupiah), it is not registered or a fiduciary guarantee deed is not made by a notary so that registration is not possible, while for loans with a nominal value above Rp. 10,000,000 (ten million rupiah), the fiduciary guarantee deed is made by a Notary and then registered at the Fiduciary Registration Office. However, these criteria are not fixed, in other words, loans under Rp. 10,000,000 (ten million rupiah) is definitely not registered as a fiduciary guarantee because it depends on the decision of the loan committee. If registration is deemed necessary, the collateral for the loan will be registered with the fiduciary guarantee registration agency, thereby becoming a fiduciary guarantee at KSP Ema Duta Mandiri.

This decision was made because loans at KSP Ema Duta Mandiri cannot be applied like other financial institutions, such as banks, which have standard and strict rules for borrowers. This is because the cooperative is member-owned. Borrowers at KSP Ema Duta Mandiri are members, namely the owners of the cooperative itself, considering the principles of cooperatives themselves are mutual cooperation and kinship. However, KSP Ema Duta Mandiri still requires collateral/collateral in loan disbursement, as a guarantee of repayment of the borrower's debt.

Loan Cooperative

As a preventative measure, credit agreements between creditors and debtors always include the following clauses:

- a. Prohibition on the transfer of the collateral during the credit term; and; negligence on the part of the debtor, whether arising from a contractual relationship or an unlawful act, regarding the use and transfer of the object serving as the fiduciary guarantee;
- b. Written notification of any action against the collateral, such as the legal act of renting or lending the collateral.

Analogously, any legal action by the debtor without the creditor's knowledge cannot be recognized by the creditor. Promises (performance) between the creditor and the debtor remain subject to the credit agreement signed at the beginning of the loan disbursement. The debtor remains responsible for the repayment of the credit facility. If the debtor is unwilling to fulfill this responsibility, the creditor has the right to pursue legal action to collect the debt, both against the collateral and all of the debtor's assets.

In debt agreements secured by fiduciary collateral, the fiduciary recipient (creditor) in the event of a default by the debtor, is accorded priority by the Fiduciary Guarantee Law to the fiduciary recipient in the repayment of the debt over other creditors. The fiduciary recipient has priority before the law in the repayment of its receivables. Likewise, if an enforcement action is taken against the fiduciary collateral, its enforcement action takes precedence over other creditors in the repayment of its receivables based on the proceeds of the enforcement action.

This fiduciary collateral enforcement action is carried out if the debtor fails to fulfill its obligations (default) or defaults as stipulated in the fiduciary collateral deed. If the debtor defaults, the executorial title contained in Article 15 paragraphs (1) and (2) of the Fiduciary Guarantee Law states:

- (1) The Fiduciary Guarantee Certificate as referred to in Article 14 paragraph (1) shall include the words "FOR THE SAKE OF JUSTICE BASED ON THE ONE ALMIGHTY GOD."

(2) The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executorial power as a court decision that has obtained permanent legal force.

From the aforementioned articles, it can be said that this fiduciary guarantee specifically has executorial power over the implementation of the fiduciary guarantee. Executorial here is interpreted as having the same power as a decision issued by a District Court. This is emphasized in Article 15 paragraph (3) of the Fiduciary Guarantee Law, which states:

"If the debtor defaults, the Fiduciary Recipient has the right to sell the Objects that are the object of the Fiduciary Guarantee at his own discretion."

According to Article 15 paragraph (3), a fiduciary guarantee can be executed by the creditor even if the debtor still controls it. However, if the debtor is in default, the fiduciary guarantee object can be executed under the provisions of the article. This is because the fiduciary guarantee also has an executorial title as regulated in Article 15 paragraph (1) of the Fiduciary Guarantee Law.

The executorial title contained in the fiduciary guarantee certificate, with the injunction "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD," is a statement containing authority that the document (script) has the power of execution (forced implementation) with the assistance of state apparatus. Article 29 number 1 of Law No. 42 of 1999 concerning Fiduciary Guarantees regulates various methods that can be used to sell the fiduciary guarantee object. These include an execution title through a public auction or a private sale.

With this executorial title, the guarantee holder A fiduciary may file an execution request with the court, and the court will comply with the execution procedure. If the creditor's receivables are secured by collateral containing an executorial title, such as a fiduciary security, the creditor may directly request the auction sale through the fiat of the district court's chairman without having to go through a lawsuit process. The execution of the Execution Title by selling the fiduciary collateral object through an auction under the authority of the fiduciary recipient is usually carried out using Parate Execusi. Parate Execusi can be interpreted as the authority granted by law or by a court decision to one party to enforce the contents of an agreement or

judge's decision by force if the party in breach of contract or default.

Execution of Title (of Execution Rights) Parate Execution by the fiduciary recipient has two main requirements: the debtor or fiduciary grantor has defaulted and has obtained a fiduciary guarantee certificate stating "For the Sake of Justice Based on the One and Only God." This execution is carried out by selling the fiduciary guarantee object publicly (at auction) or by any other method deemed appropriate by the chief justice. Therefore, the Fiduciary Guarantee Law deems it necessary to specifically regulate the execution of Fiduciary Guarantees through a parate execution institution. The right of parate execution arises when the guarantee agreement is agreed upon by the parties, but this right can only be exercised if the debtor defaults. If the debtor does not default during the consumer financing process, this right is automatically terminated upon payment of the secured debt.

The Fiduciary Guarantee Law also authorizes parties to agree to the authority to sell the secured object under their own authority regarding material guarantees. If the debtor defaults, the Fiduciary Recipient has the right to sell the assets subject to the Fiduciary Guarantee at their own discretion. This is one of the characteristics of Fiduciary Guarantees, namely, facilitating enforcement if the Debtor defaults.

In general, civil law enforcement is carried out through the courts, either through a legally binding judge's decision or another document with executory power that can be executed by fiat of the chief justice of the district court, such as a Fiduciary Guarantee certificate. According to Harahap, enforcement is a legal action taken by the court against the losing party in a case.

Based on Satjipto Raharjo's theory of legal protection, legal protection is providing protection for human rights (HAM) that have been harmed by others and that protection is provided to the public so that they can enjoy all rights granted by law. Therefore, the state is obliged to protect the public or citizens. This form of legal protection by the state is manifested through relevant legislation, in this case the Fiduciary Law. Fiduciary guarantees must be registered in accordance with Article 3 of the Fiduciary Law, with the aim of ensuring creditor ranking (preferred creditors).

Not only do creditors receive legal protection, but debtors also receive legal protection through registration of fiduciary guarantee objects. This is evident in Constitutional Court Decision No. 18/PUU-XVII/2019 in conjunction with Constitutional Court Decision No. 2/PUU-XIX/2021 concerning the execution of fiduciary guarantee objects without an agreement in the event of a default or breach of contract by the debtor. According to the Court, executing a fiduciary guarantee certificate through the district court is actually only an alternative that can be taken in the event of a lack of agreement between the creditor and the debtor, whether there is a default or the voluntary surrender of the collateral from the debtor to the creditor.

The Court emphasized that creditors cannot carry out unilateral, forced execution, such as by requesting assistance from the police. If there is a default by the debtor, as the grantor of fiduciary rights to the creditor, that has not yet been recognized by the debtor. The debtor also objects to voluntarily handing over the object of the fiduciary agreement, the Constitutional Court has emphasized in MK Decision No. 2/PUU-XIX/2021 that the creditor is required to submit a request for execution to the District Court. Regarding the executorial power of the fiduciary guarantee certificate. The Constitutional Court issued Constitutional Court Decision No. 2/PUU-XIX/2021 which is an affirmation of Constitutional Court Decision No. 18/PUU-XVII/2019, in this Constitutional Court Decision No. 2/PUU-XIX/2021 confirms that the execution of the fiduciary guarantee that can be submitted to the district court by the creditor as regulated in Constitutional Court Decision No. 18 of 2019 is alternative.

The term "alternative" as referred to in Constitutional Court Decision Number 2 of 2021 means that the execution of fiduciary collateral through a petition to the district court is one option for executing fiduciary collateral if no prior agreement has been reached between the debtor and creditor regarding settlement in the event of default. Furthermore, if the debtor has acknowledged a breach of contract and voluntarily transferred the fiduciary collateral, the execution of the fiduciary collateral may be carried out by the creditor or the debtor themselves. However, the creditor may request the debtor's consent before entering into the agreement, stating that in the event of a breach of contract, a petition will be filed with the District Court.

The provision that execution cannot be carried out solely, but rather requires a petition to the District Court, essentially balances the legal positions of the debtor and creditor and prevents arbitrary execution. In other words, this Constitutional Court Decision provides legal certainty to interested parties and grants the fiduciary recipient priority (preference) over other creditors. The debtor's interests are also taken into account. Furthermore, registering a Fiduciary Guarantee is a manifestation of the principle of publicity.

In accordance with the loan disbursement mechanism at the Ema Duta Mandiri Savings and Loans Cooperative (KSP), where vehicles are used as collateral, the vehicles used as collateral must be registered with a fiduciary guarantee institution to issue a Fiduciary Guarantee Certificate, which guarantees protection and legal certainty for both the creditor (in this case, the Ema Duta Mandiri Savings and Loans Cooperative) and the debtor. Registration is expected to prevent debtors, especially delinquent debtors, from repurposing the fiduciary guarantee or even selling or transferring the Fiduciary Guarantee to a third party without the knowledge of the Ema Duta Mandiri Savings and Loans Cooperative.

At the Ema Duta Mandiri Savings and Loans Cooperative (KSP), until now the problem of bad loans with vehicle collateral that has been registered with the fiduciary guarantee institution until the issuance of the Fiduciary Certificate with the executorial title of the fiduciary certificate has greatly influenced the implementation of the execution of the collateral object, evidenced by the existence of a warning letter and notification to the borrower/debtor that the loan status of the borrower/debtor in question is bad and the collateral object has been registered and a fiduciary certificate has been issued in the name of the fiduciary recipient, namely the Ema Duta Mandiri Savings and Loans Cooperative (KSP) has been able to make the borrower/debtor acknowledge the existence of a default and voluntarily hand over the vehicle used as collateral to be sold underhand as repayment of the borrower/debtor's debt, this is done because again that the principle of the Cooperative is family. So so far if there is a borrower who is in default or in default, the borrower and the cooperative still prioritize the principle of family because the cooperative is none other than the borrower's property as a member of the cooperative

Conclusion

1. Providing loans with fiduciary collateral to cooperatives carries the risk of default by the borrower. To guarantee repayment of the debt, the cooperative requires the borrower to provide collateral in the form of movable property, in this case a vehicle, which grants the cooperative the right and authority to obtain repayment if the borrower fails to repay the debt on time. This collateral remains a general guarantee if the cooperative does not bind it with a specific guarantee, such as a fiduciary guarantee for movable property.
2. At KSP Ema Duta Mandiri, if the debtor defaults, the cooperative can execute the collateral based on the executorial title contained in the fiduciary guarantee certificate, namely the irah-irah "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD." The execution of fiduciary collateral objects is usually carried out through underhand sales.

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WAWANCARA

Wawancara dengan Bapak Dwi Emaputra, SE., MM, Selaku Ketua Pengurus KSP Ema Duta Mandiri, Tanggal 10 Oktober 2025

Wawancara dengan Ibu Ni Kadek Darmayanti, SE, Selaku Manager Kantor Pusat Operasional sekaligus Bendahara KSP Ema Duta Mandiri, Tanggal 15 Oktober 2025

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